Term 27. 1876 ucq

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 516.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

LOUIS SUSSFIELD, SIGMUND LORSCH, AND HERMAN NORDLINGER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 516.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Louis Sussfield, Sigmund Lorsch, and Herman Nordlinger, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-six, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT,
Clerk.

The foregoing writ is hereby allowed.

SAM'L BLATCHFORD.

(Indorsed:) U. S. Supreme Court, Chester A. Arthur, plaintiff in error, against Louis Sussfield et al., defendants in error. Writ of error. Filed M'ch 14, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

2 I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify (that by virtue of the foregoing writ of error, and in obedience thereto) that the following pages, numbered from one to thirty-one inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, and Louis Sussfield, Sigmund Lorsch, and Herman Nordlinger, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 29th day of August, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

3 U. S. circuit court, southern district of New York, second circuit.

LOUIS SUSSFIELD, SIGMUND LORSCH, & HENRY Nordlinger
vs.
CHESTER A. ARTHUR.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, of the April term, A. D. 1873.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

KENNETH G. WHITE,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 2nd day of October, A. D. 1873, being as yet of the April term, A. D. 1873, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came Louis Sussfield, Sigmund Lorsch, & Henry Nordlinger, the plaintiffs, by Chase, Hartley, & Coleman, their attorneys, & brought into the said court, before
4 the judges thereof, then & there, their certain declaration & bill of particulars against Chester A. Arthur, the defendant, being in custody etc., of a plea of trespass on the case upon promises, which said declaration & bill of particulars are in these words, that is to say:

THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit, of the April term, in the year one thousand eight hundred and seventy-three.

LOUIS SUSSFELD, SIGMUND LORSCH, & HENRY Nordlinger
vs.
CHESTER A. ARTHUR.

Louis Sussfeld, Sigmund Lorsch, & Henry Nordlinger, plaintiffs in this suit come into court, and by Chase, Hartley & Coleman, their attorneys, give the court now here to be informed that heretofore, to wit, on the twenty-fifth day of April last past this action was commenced in the supreme court of the city and county of New York, according to the laws of the State of New York and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court.

That the defendant afterwards, by his attorney, George Bliss, esquire, duly appeared in said action, and thereupon on the fifteenth day
5 of September, in the year one thousand eight hundred and seventy-three, the said action was duly removed by writ of certiorari for further prosecution into this court, according to the act of Congress in such case made and provided, and the clerk of the said su-

preme court did thereupon return the said writ with the said summons and duly file the same in this court, which allegations the defendant admits to be true.

Wherefore let the further proceedings and trial in this action be continued in this court. And the said plaintiffs, who are partners under the former name of Sussfeld, Lorsch & Company, and as such firm, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that, whereas, said defendant on the 25th day of April, eighteen hundred and seventy-three, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of three hundred and $\frac{}{100}$ dollars, lawful money of the United States of America, for duties on merchandize, to wit: Spectacles, clocks, watch-guards, opera-glas'es, & brass goods imported into and entered at the collection-district of the United States for the city of New York, on divers days between April 15, A. D. 1872, & March 20th, in the year one thousand eight hundred and seventy-three, in the following vessels, to wit:
6 Holsatia, Java, Westphalia, Donau, Deutschland, Egypt, Canada, Bremen, Hammonia, Frisia, Parthia, Thuringia, & Baltic, from Hamburg, Liverpool, Paris, Havre, & Bremen, in Europe, unlawfully demanded, exacted, and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law. And being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid at the place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of three hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before
7 that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant in consideration thereof, afterwards, to wit, on the same day and year last aforesaid and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the same sum of money in this count mentioned, when he should be thereunto afterwards requested.

Nevertheless said defendant (although often afterwards requested so to do) has not paid said sums of money or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs has hitherto refused and still does refuse, to the damage of the said plaintiffs of one thousand dollars, and therefore the said plaintiffs bring suit, &c.

CHASE, HARTLEY & COLEMAN,
Attorneys for the Plaintiffs.

Supreme court, city and county of New York.

LOUIS SUSSFELD & OTHERS
against
CHESTER A. ARTHUR.

NEW YORK, *April* 25, 1873.

SIR: This action is brought to recover duties illegally exacted by defendant as collector of customs at the port of New York, and the following is the bill of particulars therein, viz:

Name of importer (for all the importations), Sussfeld, Lorsch & Company.

	Description of goods.	Name of vessel.	Whence imported.	Date of invoice.	Date of entry at custom-house.	Date of payment of duties in excess.	Amount of duty illegally exacted.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision thereon.
1				1872.	1872.		$ cts.	1	8 7	3
2										
3	Spectacles	Westphalia	Havre	March 30	April 18	April 18	103 56	Feb. 1	Feb. 14	March 21
4	Do.	Weser	Paris	Nov. 25	Dec'b'r 11	Dec. 11	63 07	1872. Dec. 14	1872. Dec. 16, Jan. 17	None made.
5								Jan. 9, 1873		
6										
7	Spectacles	Donau	Bremen	Nov. 9	Nov. 26	Nov. 26	34 23	1873. Jan. 9	1873. Jan. 17	Feb. 1
8	Do.	Deutschland	....do	" 30	Dec. 18	Dec. 18	41 20	" 9 & 21	" 17 & 30	" "
9	"	Egypt	Liverpool	" 9	" 2	" 2	10 00	" 9	" 17	" "
10	"	Canada	....do	" 28	" 23	" 23	9 45	" "	" "	" "
11	"	Bremen	Bremen	" 30	" 27	" 27	24 00	" "	" "	" "
12	"	....do	... do	Dec. 4	1873. Jan. 3	1873. Jan. 3	22 32	" "	" "	" "
13	"	Hammonia	.... "	" 14	" 6	" 6	42 00	Feb. 14	Feb. 14	" 27
14	"	Frisia	Havre	" 31	" 25	" 25	67 85	" "	" "	" "
15	"	Parthia	Liverpool	" 17	" 6	" 6	12 71	" "	" "	" "
16	"	Thurangia	Havre	1873. Jan. 20	Feb. 8	Feb. 8	88 45	" "	" "	" "
17	"	Hammonia	....do	" 29	" 14	" 14	50 01	Mar. 20	Mar. 31	April 10
18	"	Baltic	Liverpool	Feb. 27	Mar. 19	Mar. 19	22 12			" "
19										

Very respectfully,

To Hon. GEO. BLISS, *Attorney for Defendant.*

CHASE, HARTLEY & COLEMAN, *Attorneys for Plaintiff*, 51 *William Street.*

9 And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, &c., and says he did not undertake and promise in manner and form as said plaintiffs have above thereof declared against him, & of this he puts himself upon the country, & the said plaintiffs do the like, &c.

Therefore the issue above joined is ordered by the said court to be tried at a circuit court appointed to be held at the United States court-buildings on the 3rd Monday of October, A. D. 1874. And now, to wit, on the 20th day of February, A. D. 1875, being as yet of said October term, before honorable William J. Wallace, sitting as circuit judge at said court-buildings, came the said parties, by their attorneys, & the said judges before whom said issues were tried hath sent here his record, had before him in these words, to wit: Afterwards, to wit, on the same day & place, before said William J. Wallace, judge of said circuit court, came the plaintiffs & defendant, by their attorneys, & the jurors of the jury also came, who, to speak the truth in the matter within contained, being duly chosen, tried, & sworn, upon their oaths, say that said defendant did undertake and promise in manner and form as said plaintiffs have above declared against him, & they assess

10 the damages of said plaintiffs at three hundred dollars, gold coin of the United States, over and above their costs & charges in this suit expended, & for those costs and charges the sum of forty-six dollars and eighty-five cents.

Therefore it is considered that said plaintiffs recover against said defendant their said debt of three hundred dollars gold, coin of the United States for the damages they have sustained on occasion of the obtaining of said debt, & forty-six dollars & eighty-five cents, in lawful money of the United States, for their costs by them about this suit in this behalf expended by said court, now here adjudged to them and with assent, which said debt, damages, & costs in the whole amount to three hundred dollars in gold coin, and forty-six dollars eighty-five cents in currency.

And said defendant in mercy, etc.

Judgment signed this 18 January, 1876.

R. E. STILWELL,
Dep. Clerk.

(Indorsed:) U. S. circuit court. Louis Susselfeld et al. vs. Chester A. Arthur. Judgement-record. Chase, Hartley & Coleman, att'ys for pl'ffs. Filed Jan'y 18th, 1876.

11 *Bill of exceptions.*

U. S. circuit court, southern district of New York.

LOUIS SUSSFELD ET ALS. }
vs.
CHESTER A. ARTHUR. }

This cause came on for trial before Hon. W'm J. Wallace, United States district judge, holding the term of this court at the October term thereof, when a jury was duly empannelled and sworn on the 19th day of February, 1875, to try the issues joined herein, and the following proceedings, among others, were thereupon had:

Upon said trial the plaintiffs, to maintain the issues on their part, introduced testimony showing that plaintiffs, as partners in business, under the firm-name of Sussfeld, Lorsch & Co., imported from a foreign country into the port of New York, by the vessels and at the times mentioned in the plaintiff's bill of particulars served in this action, certain articles of merchandize. The testimony as to said mer-
12 chandize was given by one witness, Herman Nordlinger, who was called by plaintiffs and testified as follows:

I am one of the plaintiffs in this action; at the time of the importation of the articles in controversy the plaintiffs were partners, and were importers of optical and mathematical instruments. The articles which we imported and protested on, mentioned in the various invoices in evidence, were spectacles; that was their commercial name. The spectacles are manufactured of glass and iron or steel. Those involved in this suit were manufactured of glass and steel.

With the exception of dates and amounts, the following entries and invoices may be taken as representing all the said invoices, entries, and protests produced in evidence:

13 Extract from invoice forwarded by Mess'rs James Hass & Co., Liverpool, per st'r.

S. L. C. case 23. 108 doz. spectacle-frames No. 50. Glazing & boxing 108 doz.

* * * * * * *

104 doz. periscopic convex glasses, 2nd quality, fitted in above frames, assorted.

4 doz. periscopic convex glasses, 2nd quality, fitted in above frames, No. 5.

* * * * * * *

14,15

IMPORT ENTRY.—BOND A.

Entry of merchandise imported by Sussfield & Lorsch & Co., in the st'r Egypt, whereof ——— ——— is master, from Liverpool.

NEW YORK, *Dec. 2nd*, 1872.

Marks.	Nos.	Packages and contents.	Invoice. Where dated.	25. less 10.	35. less 10.	45. less 10.	40 %.		Total.
S. L. C.	23	One case spectacles mf. glass.....		11 4 10	30 2 8	43 4 0	48 12	3 H.	133 2 11
		M't's of steel and glass, $45 from 40 %, box 45%, Iron, &c., watches ..		8	15	10	10		2 3 0
		" " glass, $205, c. 4 %. Ch'y's invoice.....							
				11 12 0	30 17 8	43 14 0	49 2 3		135 5 11
		Skins dried and finished, $95, from 35.10 to 20 %.....		11 6	1 10 10	2 4 0	2 9 0		6 15 4
		M'f's of glass..... $51 fr. " to 40 %, com., 5 %.....							
		£	20 %	12 3 6	32 8 6	45 18 0	51 11 3		142 1 3
			$95	$59	$157	$222	$250	40 %	$688
					146	45	45	205	
			59 25					51	
1 In.	159	25 % 14 75	11 35		11	267	205		
	157	35 % 54 95	256 40					256	
	222	45 % 99 90	267 45		14 75				
		169 60			3 85				
		Les. 10 % 16 96			102 40				
		152 64			120 15				
	250	40 100 00			$241 15				252 64
		252 64	Less 10.		24 11				236 04
					217 04				1,660
					19 00				B. S.
			$95 20 %		236 04				
		P. Dec. 2.	B. S.		Inj $236 04				

(Written across the face:) E. A. Feb'y 27, '73. C. O. B.

16 *Protest.*

NEW YORK, *Jan. 9th*, 1873.

SIR: We protest against your decision as to the rate and amount of duties to be paid on the spectacles S. L. C. 23, entered by us for consumption Dec. 2, 1872, per Egypt from Liverpool, because they are manufactures of which glaess is a component, dutiable at 40 % under sec. 9, act June 30, 1864, less 10 % under sec. 2, act June 6th, 1872.

We pay the excess exacted under compulsion, solely to get the goods.

SUSSFIELD, LORSCH & CO.,
By CHASE, HARTLEY & COLEMAN,
Att'ys, 51 *William Street.*

COLLECTOR OF CUSTOMS, *New York City.*

17 *Extract from invoice.*

BIRMINGHAM, *Nov.* 28, 1872.

Mess. Sussfeld, Lorsch & Co., bought of Edward Gem & Co., forwarded by Mess. James Hess & Co., Liverpool, per steamer from Liverpool.

S. L.
C.
Case 24.
52 doz. spectacle-frames, glazing & boxing.
24 doz. frames only.
22 " " " stamped "pebbles."
52 doz. lenses, fitted in above frames.
(Appraiser's return made after entry, "Man'f. of glass & steel, 45—10.'

IMPORT ENTRY.

Entry of merchandise imported by Sussfield, Lorsch & Co., in the st. Canada, whereof —— —— is master, from Liverpool.

NEW YORK, *Dec.* 18, 1872.

REC. 309—1

Marks.	Nos.	Packages and contents.	Invoice, where dated.	35 Less 10.	45 Less 10.	Total.
S. L. C.	24	On case mf. iron & steel cugs & ceru. 5 % U'excel'd.	Birmingham.	£73 00	43 83	£116 83
	1	In. $353, 35 %	123 55	$353	$210	$563
		210, 45 %	94 50			
		Less 10 %	218 05			
			21 80			
			196 25			

P. Dec. 23.

SUSSFELD, LORSCH & CO.,
13 *Maiden Lane.*

(Written across the face:) S. J. N. B. Feb. 25, '73. C. G. N.

19 *Protest.*

NEW YORK, *Jan.* 9, 1873.

SIR: We protest against your decision as to the rate and amount of duties to be paid on the spectacles S. L. C. 24 entered by us for consumption, Dec. 23, 1872, per Canada from Liverpool, because they are manufactures of which glass is a component material, &c., and are liable at 40 % under sec. 9, act June 30, 1864, with 10 % reduction under sec. 2, act June 6th, 1872.

We pay the excess exacted under compulsion solely to get the goods.

SUSFIELD, LORSCH & CO.,
By CHASE, HARTLEY & COLEMAN,
Att'ys, 51 William Street.

COLLECTOR OF CUSTOMS, *New York City.*

20 [Translation.]

PARIS, *Dec.* 4, 1872.

Extract invoice, Sussfeld, Lorsch & Co.

S. L. & C.
‡2860.

50	dozen	spectacles	No. 4005, double focus, 28.50		1,510 50
28	"	"	" 31 olive-shaped ear-bows, convex green glasses, 8		224 —
16	"	"	" 31½ shell glasses of various shades of color, 9		144 —
12	"	"	" 31½ fine ditto, ditto, ditto, 9.25		111 —
25	"	"	" 421 periscopic, 6.25		156 25
12	"	"	" 21 shell glasses of various shades of color, 7		84 —
6	"	"	" 31 olive-shaped ear-bows, shell glasses of various shades of color, fine, 22.50		135 —
6	"	"	" 51 grooved shell glasses of various shades of color, fine, 36		216 —
					2,580 75

* * * * * * * *

Appraiser's return: "Steel specs' 45 / 10." (Made after entry.) S. L. & Co. ‡2860, one case, as noted Jan. 10, '72. James Bent. Approved. W. A. Darling, appraiser.

21 *Extract invoice m'd'se consigned to Mess. Sussfeld, Lorsch & Co., New York.*

S. L. & C.
‡2854.

46½	gross	spectacles	No. 11, assorted, 31		1,436 35
36	dozen	"	No. 431, concave, 7		252 —
36	"	"	No. 421, " 6		216 —
40	"	"	No. 433, ends of ear-bows olive-shaped, 9		360 —
55	"	"	No. 221, blue, green, and various other colors		254 40
24	"	"	No. 11, hunters' spectacles, 5		120 —
158	"	eye-glasses	No. 180, periscopic		1,350 50

* * * * * * * *

S. L. & C.
‡2857.

122	dozen	eye-glasses	No. 236, convex and periscopic		1,350 25

(Appraiser's return on invoice after entry on the above goods: "Steel spec's 45 / 10." Approved. W. A. Darling, appraiser.)

22 Upon the last two invoices above mentioned the goods were entered by the importers upon forms similar to those above given, and the goods in said last two invoices, having the marks and numbers therein stated, and protested against in this action, were described upon the import entries thereof, under the column on said entries calling for "packages and contents," in one instance as "manufactures of glass and steel," and in the other as "manufactures of glass and iron," and were assessed with duty at forty (40) five per cent. and thirty-five per cent., ad valorem, respectively.

23 The defendant, who was collector of customs at said port, exacted from plaintiffs on the merchandise in dispute duties at the rate of forty-five per centum, ad valorem, less ten per centum thereof.

Protests were made in form as specified against the said exactions of duty at that rate by defendant; appeal thereafter taken from the said decision of the collector to the Secretary of the Treasury, each within the respective times prescribed by law.

The Secretary affirmed the said decision of the collector, and within ninety days after said decision on each of said appeals this action was brought.

The defendant offered no testimony, and the foregoing comprises the evidence in the case.

The plaintiffs claimed that the merchandise was dutiable, under section 9 of tariff act of June 30, 1864, as manufactures of which glass is a component part, not otherwise provided for, at 40 per centum ad valorem, with a reduction of ten per centum of duty, under section 2, act of June 6th, 1872.

24 Defendant claimed that the merchandise was dutiable as "manufactures of steel, or of which steel shall be a component part, not otherwise provided for, forty-five per cent., ad valorem; provided, that all articles of steel partially manufactured, or of which steel shall be a component part, not otherwise provided for, shall pay the same rate of duty as if wholly manufactured," under section 3, act of June 30th, 1864, with a like reduction of ten per centum, under said act of 1872. It was conceded that upon the importations in question in this case, if plaintiffs were correct, at least three hundred dollars had been exacted in excess.

Upon the foregoing case, there being no question of fact in dispute, nor any question except as to the proper rate of duty on said goods, the defendant moved that the court direct a verdict for the defendant.

25 The court having expressed doubt upon said motion, the damages of the plaintiffs were assessed by the jury at $300.00, by consent of the parties, if the court should be of the opinion that any recovery should be had under the said objection of the defendant.

The court, after argument, denied said motion, and ordered judgment on said verdict, to which ruling and direction the defendant then and there excepted.

And inasmuch as the several matters of fact and law, and the said several exceptions do not appear by the judgment-record in this case, the said judge, at the defendant's request and at the October term of said court aforesaid, has signed and sealed this, the bill of exceptions in this cause.

WM. J. WALLACE,
Judge U. S. District Court.

26 (Indorsed:) U. S. circuit court, southern district of New York. Louis Sussfield et als. versus Chester A. Arthur. George Bliss, United States attorney for the southern district of New York. Bill of exceptions. Filed M'ch 6, 1876. Hartley & Coleman, pl'ff' attorney'.

27 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PL'FF IN ERROR,
vs.
LOUIS SUSSFIELD, SIGMUND LORSCH, & HERMAN NORDLINGER, def'ts in error.

Afterwards, to wit, on the second Monday of October, in this same

term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Chester A. Arthur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendants against the said plaintiff, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendants; and the said
28 plaintiff prays that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, as the same appears more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of the said judgment.

GEORGE BLISS,
United States Attorney for the Plaintiff in Error.

(Endorsed:) Supreme Court of the United States. Chester A. Arthur, pl'ff in error, vs. Louis Sussfield, Sigmund Lorsch, & Herman Nordlinger, def'ts in error. Assignment of error. George Bliss, U. S. att'y for pl'ff in error. Filed July 19th, 1876.

29 UNITED STATES OF AMERICA, *ss:*

To Louis Sussfield, Sigmund Lorsch, and Herman Nordlinger, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur, plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, chief justice of the said Supreme Court of the United States, this fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

SAM'L BLATCHFORD.

(Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Louis Sussfield et al., defendants in error. Citation.

NEW YORK, *Mar.* 14, 1876.

The defendants in error hereby acknowledge service of the above citation by their attorneys.

HARTLEY & COLEMAN,
Atty's for Def'ts in Error.

Filed M'ch 14, 1876.

(Indorsement on cover:) No. 516. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Louis Sussfield, Sigmund Lorsch, and Herman Nordlinger. S. New York, C. C. U. S. Filed 13th October, 1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
vs.
LOUIS SUSSFIELD AND ANOTHER. } No. 516.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &c.,
vs.
LOUIS SUSSFIELD AND ANOTHER. } No. 516.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

The sole issue in this cause is the proper classification for duty of steel-bowed spectacles. The collector assessed them at 45 per cent. as "manufactures of steel, or of which steel shall be a component part not otherwise provided for," under the act of June 30, 1864, c. 171, § 3 (13 Stats., 209). The plaintiffs below claimed to enter them at 40 per cent. as "manufactures of which glass is a component part not otherwise provided for," under section 9 of the same act. The defendant below moved for judgment, which was refused, and judgment was entered in favor of the plaintiffs, upon a verdict in their favor for the difference in rates, the judge holding the goods dutiable only at the lower rate.

ASSIGNMENT OF ERROR.

The plaintiff in error assigns for error the ruling that these spectacles were only liable to a duty of 40 per cent., and the judgment rendered in accordance with this ruling.

BRIEF.

Either of the sections mentioned (3 and 9) would be applicable to these articles, if the other was not in existence. As they stand, both might be said to give a partial description. As neither gives a complete description, nor one which can be so applied as to exclude the other, neither can be held applicable. Then such spectacles must be treated as a non-enumerated article; though those of which steel is a component, and those of which glass is a component, are both enumerated. Not being enumerated, and equally resembling two enumerated articles, according to "the similitude clause" of the act of August 30, 1842, c. 270 § 20 (5 Stats., 609), these spectacles must pay "the same rate of duty as is chargeable on the article which it resembles paying the highest duty;" the section concluding thus: "and on all articles manufactured from two or more materials, the duty shall be assessed *at the highest rate* at which any of its component parts may be chargeable." Reproduced in R. S., sec. 2499.

EDWIN B. SMITH,
Assistant Attorney-General.

P. F. McBreen, Law and Job Printer, 14 & 16 Ann St., N. Y.

U. S. Supreme Court.

CHESTER A. ARTHUR,
Plaintiff in Error,
v.
LOUIS SUSSFELD *et als.*

October Term, 1877.—*No.* 516.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

The Collector of the Port of New York exacted duty at 45 per cent. on spectacles made of glass and steel, imported in 1872 and 1873, under a clause in section 3, Act of June 30, 1864, which reads:

"On all manufactures of steel, or of which steel shall be a component part, not otherwise provided for, 45 per cent."

13 Statutes, p. 205; bottom.

He allowed 10 per cent. reduction of duty on all importations after August 1, 1872, under section 2, Act of June 6, 1872, which reduction is not in dispute.

The importer claimed by protest that the spectacles were dutiable at 40 per cent. under a later section of the same Act, section 9, which reads:

"On * * * pebbles for spectacles and all manufac-

tures of glass or of which glass shall be a component material, not otherwise provided for, 40 per cent.," 13 Statutes, 211; below middle. With 10 per cent. reduction as allowed on importations subsequent to August 1, 1872.

There was no testimony as to the material of chief value.

The Court held that the Spectacles were more properly dutiable in their glass aspect.

Record, folios 12 to 25.

ARGUMENT.

First.

Literally these Spectacles fall under both sections, but if they can be more fitly placed under one section than the other, the repugnancy will be avoided.

I.

In the steel section of the Act of 1864, there is no article containing glass nor resembling spectacles, so no *particular* intention to include *spectacles* can be inferred in the residuary clause for "manufactures of which steel shall be a component part."

In the glass section "pebbles for spectacles" are named just before the residuary clause; spectacles then were in the mind of the law-maker who used immediately after apt terms to describe them, viz., manufactures of which glass shall be a component material.

II.

The only use of spectacles is for the sight. The only valuable component for that purpose is glass, and when the question arises whether they shall be dutiable by the material which gives them their name, use and value, or by the material of an accessory part, there can be but one answer.

Glass is the useful and indispensable component, and it is absurd to call spectacles a manufacture of steel.

And Congress must be supposed to have designed to include spectacles under that term which most properly describes them.

Weihenmayer *v.* Arthur, 22 Int. Rev. Record, 368, 369.

Boving *v.* Lawrence, 1 Blatch., 607, (vermillion).

Tariff Acts being addressed to commercial men for their guidance must have a practical common sense interpretation.

III.

If the frames are to fix the duty, there will be as many rates of duty on spectacles as there are on materials of the frames, on steel spectacles 45 per cent., on gold and silver 40 per cent., on iron, horn, or shell 35 per cent., on rubber 25 per cent., so that there would be no rate of duty on *spectacles*. We cannot assume that Congress intended this confusion, or that gold spectacles should pay less duty than steel ones.

IV.

The terms "manufactures of which glass shall be a component material, not otherwise provided for," and for "glasses and pebbles for spectacles," are first found in the Tariff of 1846.

Schedule C, 9 Stats., 45, below middle.

The term manufactures of which steel shall be a component is first found in the Tariff of 1861.

12 Statutes, 182, near top.

And was then contrasted as now with manufactures of which glass shall be a component.

12 Statutes, 187, above middle.

It may, therefore, be argued that the glass clause of the Act of 1864, having been in the Tariff since 1846, should not yield any of its force to the steel clause introduced for the first time in 1861, but should govern in cases where the clauses conflict.

Second.

If none of the above rules solve the difficulty, the case is one of repugnant statutes to be governed by the rules of law upon the removal of repugnancies.

I.

In case of conflicting provisions of the same statute the last provision shall prevail as the latest expression of the legislative will.

Powers *v.* Barney, 5 Blatch., 202, (a tariff case exactly in point).

"If the latter part of a statute is repugnant to the former part it shall stand, and so far as it is repugnant shall operate as a repeal of the former part. If there are two statutes on the same subject which are repugnant the latest operates as a repeal of the first, so far as the repugnancy extends, but no further. The latest expression of the legislative will must prevail."

Harrington *v.* Trustees of Rochester, 10 Wen., 550, 554.
Bac. Abr. Tit' Statutes, D.
Bowen *v.* Lease, 5 Hill, 225.
4 Opinions Atty. Gen., 584.
1 Kent, 466, note.
Sedgwick on Statutory and Constitutional Law, page 126.
Ibid, 129.
Brown *v.* County Com., 21 Penn., 37.

There certainly is a repugnancy in the case of spectacles made of glass and steel, and the provision relative to manufactures of which glass is a component, being the latest section of the Act, must prevail.

In the matter of John Davies, 3 Benedict, 482, 485-6, a similar conflict of clauses was presented.

Judge Blatchford held (p. 485, bottom, and 486): "A "statute must be so construed, if possible, without doing "violence to language, as to give force and meaning to "every part of it. In this case there is no affirmative "repugnance between the two clauses. The only question "is whether it shall be held to be the intention of the legis-"lature that cases falling within the second clause shall "be governed wholly by the second clause, although if "the second clause had been omitted from the section, "they would fall under the first clause. I think that is "the sound construction to be given. Even if the two

"clauses were repugnant to each other in a broader sense "than they are, the second clause would control as being "the later expression of the lawmakers." And he cites Powers *v.* Barney, 5 Blatch., 202, above referred to.

The English cases are to the same effect.

Att'y Gen. *v.* Gov.,&c.,of Chelsea WaterWorks, Fitzgibbon 195, Dwarris on Statutes, vol. 2, p. 515, 534.

Potter's Dwarris on Statutes, p. 170, and cases cited.

2 Taunton, 109.

Two repugnant Acts of Parliament passed on the same day, held that the one which last received the royal assent prevailed.

The King *v.* Justices of Middlesex, 2 Barn and Adal., 818.

II.

The rule of law is that where goods are twice enumerated for duty, the lower rate must be levied.

Powers *v.* Barney, 5 Blatch., 202.

Duties are not imposed on the citizen upon doubtful interpretations, for every duty imposes a burden on the public at large, and is construed strictly, and must be made out in a clear and determinate manner from the language of the statute.

Adams *v.* Bancroft, 3 Sumner, 384, 387.

U. S. *v.* Wiggleworth, 2 Story, 369.

Dwarris on Stats., page 749.

This rule was cited by Judge Nelson in Powers *v.* Bar-

ney, 5 Blatch., 203, as a principle, and has been approved in the following late cases :

U. S. *v.* Isham, 17 Wallace, 504.
Phila. & Reading R. R. *v.* Kenney, 18 Int. Rev. Rec., 93.
U. S. *v.* Ulmann, 5 Benedict, 553.

The Late Chancellor Bibb, while Secretary of the Treasury, in a circular to collectors and naval officers, dated August 5, 1846, said :

"It would ill become the executive department to take money from the pockets of the people by implication and constructive enlargement of the acts of the legislature. When the Congress in the exercise of their power of taxation have not spoken expressly and clearly, when the words of the law leave room for rational doubt as to a higher or lower rate of taxation, the design of the executive officers should be in favor of the lower rate. In so doing the executive action is certainly within the limit prescribed by the law. To take the highest rate of taxation in such dubious cases would be hazarding a supplement to the legislative will, and an inroad into the region of the legislative department. Such a mode of construction by the executive department would not be lenient and remedial, but onerous and penal."

The English cases are the same.

Potter's Dwarris on Statutes, 255, 266 ; and cases cited.
Hubbard *v.* Johnson, 3 Taunton, 177.
Tomkins *v.* Ashby, 6 B. and C., 541.
Warrington *v.* Turbert, 8 East., 242.
Geddwit *v.* Gladstone, 11 East., 675.
Hull *v.* Browne, 2 B. and Ad., 58.

III.

In cases of exaction of duty against the protest of the owner, where the collector seizes the goods with a strong arm and holds them till his claim is paid, the burden of proof is on him to show warrant of law for his action.

Judge Betts said in Hughes *v.* Hoyt, an unreported case in the Second Circuit: "Ordinarily a party coming into Court and setting up a right against another, must establish his case by affirmative proofs, clear and sufficient, as to all material points, and the defendant cannot be called upon to make any justification until the evidence places him decidedly in the wrong. In this class of suits that order of proceedings is in some degree reversed. The collector arrests the property and holds it until the owners pay the duty he demands, and when they prosecute to recover such coerced payment, he must show authority of law for his proceeding. It accordingly devolves upon the defendant in this case to establish the right of the government to the duty exacted."

Judge Curtis, in Wilkinson *v.* Greeley, 1 Curtis, C. C., 441, declares the same rule. He says: "In considering this question you must bear in mind that the burden of proof is upon the defendant. Acting in behalf of the government, he has levied upon these commodities a duty of 30 per cent. He has compelled the plaintiffs to pay it. When any officer of the government compels a citizen to pay a tax, he may be required to show that it was exacted by authority of law. The defendant must prove this here; and he can do so only by satisfying you that these articles were not blankets within the meaning of the Tariff Act of 1846."

And here defendant must show that spectacles are not "manufactures of which glass is a component" under the Act of 1864.

Judge Woodruff said in Lottimer *v.* Smythe, 17 Int. Rev. Rec., 13. "It has been correctly stated that when the defendant in his official position required as a condition of giving up the government control and custody of the plaintiff's goods that they should pay a sum of money which was assessed thereon, and the plaintiffs objected and protested and complied with all the proper formalities, (which are not now called in question), but submitted and paid, the defendant receiving the plaintiff's money is bound to justify his exaction; and in this case the defendant has the burden of showing to you, so far as you are called upon to pass upon the facts, that the exaction that he made was a lawful exaction."

All these rules are in our favor.

1. The glass section is the later section in the Act of 1864.
2. The glass duty is the lower duty.
3. It is for the defendant to satisfy the Court that these goods are NOT within the true intent and meaning of "manufactures of glass or of which glass is a component."

Third.

I.

It was claimed below that these spectacles should be classified under Section 22, Act August 30, 1842, (5 Stats., 565,)—commonly called the "similitude law,"—as non-enumerated articles.

Now, the Courts have held directly on this point, that goods dutiable in terms like these ARE ENUMERATED ARTICLES, and that this statute has no reference to them

whatever. And citing those authorities, we will also examine the question on principle, for the doctrine contended for by the government is very absurd and very mischevious, and if allowed will derange the entire tariff scheme of classifying articles for duty.

The Act of 1842. (5 Stats. 548, 567), is a general revenue act, containing tariff rules for the appraisement and classification of merchandise. In the first eight sections articles are "enumerated" for duty by terms of special description; in the 9th section articles are exempted from duty, and in the 10th section it is provided that "on all articles not herein enumerated or provided for, there shall be levied, collected and paid a duty of twenty per cent. *ad valorem*." 5 Stats., 551.

The caption of each section speaks of the commodities therein described as "*articles*," no matter how they may be described in the body or the section, so that sections 1 to 8 contain enumerated articles. Section 9, exempted articles, section 10 relates to non-enumerated articles.

The purpose of the 20th section was to take from section 10, which covers non-enumerated articles, all such as were substantially the same as articles enumerated in the first eight sections, and to put the same duty on them as on the articles to which they bear the closest resemblance; and where there was no other resemblance to put duty on them according to component material paying the highest rate of duty. This would restrict non-enumerated articles to such as bore no analogy to, and were not composed of the same materials as any enumerated article.

Lottimer *v.* Lawrence, 1 Blatch., 614.
Ross *v.* Peaslee, 2 Curtis, 500 to 502.

The 20th Section survived the Act of 1842, as a rule of construction applied to non-enumerated articles.

Stuart *v.* Maxwell, 16 Howard, 158.

The non-enumerated section of the present tariff reads:

> "From and after the day and year aforesaid there "shall be levied, collected and paid on the importation "of all raw or unmanufactured articles not herein "enumerated or provided for a duty of ten per cent. *ad* "*valorem*, and on all articles manufactured in whole or "part not herein enumerated or provided for a duty of "20 per cent., *ad valorem*." Section 24, Act March 2, 1861; 13 Stats., 196, near bottom—now section 2516, Revised Statutes.

Spectacles do not fall under this clause, because they are enumerated in the Act of 1864, as a "manufacture of which glass is a component," and also as a "manufacture of which steel is a component," and the 20th section of the Act of 1842 cannot apply.

U. S. *v.* U. S. Telegraph Co., 2 Benedict, 362.

Referring to an earlier case, "the Court there held that under the act bombazine was not a non-enumerated article, but that it was *doubly enumerated*. Yet the only enumeration of it was by speaking of it as an article of which wool was a "component part," or of which "silk was a component part." So here the telegraphic cable is enumerated by speaking of it as an article of which "iron is the component material of chief value."

Granting, for the sake of the argument, that these goods were dutiable under the similitude clause, they would be classed for duty with "pebbles for spectacles and manufactures of which glass is a component part," rather than as "manufactures of which steel is a component part."

The similtude law has two rules of classification. These rules are to be applied in the following order according to the leading idea of the section, which is that non-enumerated articles which are substantially the same as enumer-

ated articles must pay the same duty as the latter; this principle must have full operation, and where it cannot operate, the rule of classification according to material, obtains as the best rule of analogy left. Thus, we say the section applies in the following order:

1. A non-enumerated article shall be classed for duty with the enumerated article it most resembles in material, quality or use (a rule of classification by substantial identity); if it equally resembles two enumerated articles, it shall pay the highest duty paid by either.

2. If there is a non-enumerated article made from two or more materials that cannot be classed in that way, or in other words that is not substantially identical with any enumerated article, then it shall be classed at the highest rate paid by any one of its component parts.

Now spectacles, resemble pebbles for spectacles (lenses) and manufactures of glass, certainly in material as much, and in the use to which they are to be applied more, than they do manufactures of steel, hence, they fall under the first rule of classification by similitude with manufactures of glass, and the second rule cannot apply.

But we have argued and insist that spectacles do not come under this rule at all, because they are enumerated articles under the decisions of Court above cited.

II.

It was argued below that only the first two clauses of section 20 are confined to non-enumerated articles and that the last clause broadly refers to all articles manufactured from two or more materials.

The Courts, however, have squarely held that the whole section refers only to non-enumerated articles and that in cases arising under the last clause.

Lottimer *v.* Lawrence, 1 Blatch., 614.
U. S. *v.* U. S. Telegraph Co., 2 Benedict 362.

Aside from that, the mischiefs of the opposite construction would be intolerable. If that position were true, the clause would be repealed, by the repeated provisions in every tariff since for such articles as manufactures of iron chief value; manufactures of mixed materials; manufactures of silk chief value; manufactures of which steel is a component, manufactures of which glass is a component, indicating a subsequent positive intent of Congress that those composite articles should not pay duty according to the material component paying the highest rate of duty.

The language must be restrained in subordination to the main purpose of the section which is the more definite classification of articles for duty which are non-enumerated, but which bear analogy to articles that are enumerated.

After Congress has declared in the most emphatic way, that such articles as "jewelry," or ready-made clothing, or manufactures of linen chief value; or manufactures of silk chief value; or manufactures of wool chief value, or manufactures of which glass is a component, shall pay duty according to those enumerations, who can argue that this old clause can have such a construction as to turn the tariff upside down and defeat the declared will of Congress?

Fortified as every position we have taken is upon authority, we have defended them upon reason. The similitude law has no application whatever to this case, to give it any would derange the entire enumerations of the Tariff.

The difficulty in this case is not one of *non-enumeration*

but of repugnancy; the goods are enumerated *twice*, and one or the other of these enumerations must give way, not under the rules of the similitude section which were enacted for a very different purpose and to apply to other cases, but under the rules of law regulating the removal of repugnancies which we have invoked and which are with us.

The difficulty in this case arises from the *double enumeration of spectacles* and our argument is:

1. That they should be considered within the meaning of the law "manufactures of which glass is a component," because it is common sense that the material that gives the article its name, its use and its value should control rather than that of the accessory part, especially as by providing for pebbles for spectacles at the same time, the law-makers must have had spectacles in mind in passing the glass clauses of the law.

2. That if there is a repugnancy it must be removed by the established rules of law for the removal of repugnancies, applying which the glass duty is left in force.

3. That because spectacles are enumerated as "manufactures of which glass is a component material," and "manufactures of which steel is a component part," the 20th section of the Act of 1842 cannot apply.

EDWARD HARTLEY,
Counsel for Def'ts in Error.